APPEAL NO. 040729
FILED MAY 24, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing was held on February 2, 2004. The record closed on February 13, 2004. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to include the diagnoses of osteomyelitis, mycetoma, and actinomycetes, and that the issue of the claimant's impairment rating (IR) is not ripe for adjudication. In his appeal, the claimant essentially challenges those determinations on sufficiency of the evidence grounds. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, does not extend to and include the diagnoses of osteomyelitis, mycetoma, and actinomycetes. The claimant had the burden of proof on that issue and it presented a question of fact for the hearing officer. There was conflicting evidence presented on the disputed issue. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As such, the hearing officer was required to resolve the conflicts and inconsistencies in the evidence and to determine what facts the evidence established. In this instance, the hearing officer simply was not persuaded that the claimant sustained his burden of proving that the compensable injury extended to the conditions at issue. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record reveals that the challenged determination is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the hearing officer's extent-of-injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant's compensable injury does not include osteomyelitis, mycetoma, and actinomycetes, we likewise affirm her determination that the issue of the claimant's IR is not ripe for adjudication. The designated doctor provided a rating for the conditions that are not a part of the compensable injury and, as such, that rating cannot be adopted. The only other IR in evidence is that of Dr. N which was determined before the stipulated date of maximum medical improvement (MMI), April 18, 1998. Accordingly, the hearing officer properly determined that the claimant must be reexamined by a designated doctor and assigned a rating for his compensable injury only as of the date of MMI, April 18, 1998.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge